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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-656**

13 **NORMA DEL REAL**
14 **AKA NORMA DELREAL**
27640 Gainesville Avenue
Hayward, CA 94545

ACCUSATION

15 **27640 Hayward Boulevard, Apt. # 108**
16 **Hayward, CA 94542**

17 **Registered Nurse License No. 416536**
18 **Nurse Midwife Certificate No. 1081**
19 **Nurse Midwife Furnishing Certificate**
20 **No. 1081**
21 **Nurse Practitioner Certificate No. 7464**

Respondent.

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23 Complainant alleges:

24 **PARTIES**

25 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
26 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
27 of Consumer Affairs.

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2. On or about August 31, 1987, the Board of Registered Nursing issued Registered Nurse License Number 416536 to Norma Del Real ("Respondent"). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

3. On or about February 28, 1995, the Board of Registered Nursing issued Nurse Midwife Certificate Number 1081 to Respondent. The Nurse Midwife Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, and has not been renewed.

4. On or about July 30, 1996, the Board of Registered Nursing issued Nurse Midwife Furnishing Certificate Number 1081 to Respondent. The Nurse Midwife Furnishing Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2008, and has not been renewed.

5. On or about February 28, 1995, the Board of Registered Nursing issued Nurse Practitioner Certificate Number 7464 to Respondent. The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2010, unless renewed.

JURISDICTION

6. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (“Code”) unless otherwise indicated.

7. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

8. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

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10. Section 2762 of the Code states:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

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11. Code section 4022 states:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

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or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

12. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052 . . .

13. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

14. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge . . ."

COST RECOVERY

15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

RELEVANT MEDICATIONS

16. "Fentanyl" is the brand name for Sublimaze. It is a potent opioid (100 times more potent than Morphine), used for the treatment of moderate to severe pain. Pursuant to Health and Safety Code section 11055(c)(8), it is a Schedule II controlled substance and a dangerous drug under Code section 4022.

17. Vicodin" is the brand name for hydrocodone bitartrate combined with Tylenol. It is an opioid used to treat moderate to severe pain. Pursuant to Health and Safety Code section

1 11056, subdivision (e)(4), it is a Schedule III controlled substance and a dangerous drug under
2 Code section 4022.

3 FACTUAL BACKGROUND

4 18. At all times mentioned herein, Respondent was employed part-time as a registered
5 nurse at Washington Hospital Healthcare ("Washington Hospital"), in Fremont, California.

6 19. From January 2, 2007, up through November 25, 2007, Respondent engaged in a
7 practice of diverting Fentanyl that had been prescribed for laboring patients. Respondent's
8 typical pattern was to go to the labor and delivery unit (2 West) when assigned on the postpartum
9 unit (2 South), and withdraw Fentanyl from the Pyxis under the name of a laboring patient.¹

10 Specifically, Respondent engaged in the following acts of diverting Fentanyl:

11 a. On January 2, 2007, Respondent was assigned to postpartum. Patient 1 was in labor
12 and had at 9:06 a.m., received an epidural for pain relief. Respondent went to the Pyxis on labor
13 and delivery and at 1:13 p.m., she withdrew a 100 mcg vial of Fentanyl under Patient 1's name.
14 Respondent was not assigned to care for Patient 1. Respondent's name does not appear on any
15 labor and delivery record for this patient. There was no reference in the electronic charting for
16 Patient 1 that she received the Fentanyl withdrawn by Respondent.

17 b. On January 10, 2007, Respondent was assigned to postpartum. Respondent went to
18 the Pyxis on labor and delivery and at 1:40 p.m., withdrew a 100 mcg vial of Fentanyl under
19 Patient 2's name. Respondent was not assigned to care for Patient 2. Respondent's name does
20 not appear on any labor and delivery record for this patient. There was no reference in the
21 electronic charting for Patient 2 that she received the Fentanyl withdrawn by Respondent.

22 c. On January 25, 2007, at 8:55 a.m., Patient 3 received the re-dosing of her epidural by
23 an anesthesiologist. At approximately 1:33 p.m., Respondent went to the Pyxis on labor and
24 delivery and withdrew a 100 mcg vial of Fentanyl under Patient 3's name. Respondent's name
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27 ¹ The "Pyxis" is the computerized management, storage and medication dispensing
28 system/machine used at Washington Hospital Healthcare during the relevant times mentioned in
this Accusation.

1 does not appear on any labor and delivery record for this patient. There was no reference in the
2 electronic charting for Patient 3 that she received the Fentanyl withdrawn by Respondent.

3 d. On February 16, 2007, Respondent was assigned to postpartum. At approximately
4 12:45 p.m., she went to labor and delivery and withdrew a 100 mcg vial of Fentanyl under Patient
5 4's name. Patient 4 had an epidural that was re-dosed by the anesthesiologist at 12:46 p.m., one
6 minute after Respondent had withdrawn the Fentanyl for Patient 4. Respondent's name does not
7 appear on any labor and delivery record for this patient. There was no reference in the electronic
8 charting for Patient 4 that she received the Fentanyl withdrawn by Respondent.

9 e. On February 27, 2007, Respondent was assigned to postpartum. Patient 5 had at
10 12:15 p.m., received an epidural for pain relief while in labor and delivery. Nine minutes after
11 the placement of Patient 5's epidural, Respondent went to the labor and delivery unit and
12 withdrew a 100 mcg vial of Fentanyl under Patient 5's name. Respondent's name does not
13 appear on any labor and delivery record for this patient. There was no reference in the electronic
14 charting for Patient 5 that she received the Fentanyl withdrawn by Respondent.

15 f. On March 6, 2007, at 9:54 a.m., Respondent was assigned to postpartum. Patient 6
16 had received an epidural for pain relief while in labor and delivery. Four minutes after the
17 placement of Patient 6's epidural, Respondent went to the Pyxis on labor and delivery and
18 withdrew a 100 mcg vial of Fentanyl under Patient 6's name. Respondent was not assigned to
19 care for Patient 6. Respondent's name does not appear on any labor and delivery record for this
20 patient. There was no reference in the electronic charting for Patient 6 that she received the
21 Fentanyl withdrawn by Respondent.

22 g. On March 6, 2007, Respondent while assigned to postpartum, went back to labor and
23 delivery and again at 2:29 p.m., withdrew 100 mcg vial of Fentanyl under Patient 6's name.
24 Respondent was not assigned to care for Patient 6. Respondent's name does not appear on any
25 labor and delivery record for this patient. There was no reference in the electronic charting on
26 Patient 6 that she received the Fentanyl withdrawn by Respondent.

27 h. On March 10, 2007, Respondent was assigned to postpartum. Patient 7 was in labor
28 and at approximately 4:43 p.m., she had a vaginal birth. Nineteen minutes after Patient 7's birth,

1 Respondent at 5:02 p.m., went to Pyxis on labor and delivery and withdrew a 100 mcg vial of
2 Fentanyl under Patient 7's name. Respondent was not assigned to care for Patient 7.
3 Respondent's name does not appear on any labor and delivery record for this patient. There was
4 no reference in the electronic charting for Patient 7 that she received the Fentanyl withdrawn by
5 Respondent.

6 i. On March 27, 2007, Respondent was assigned to postpartum. Patient 8 received an
7 epidural for pain relief at 12:12 p.m. At approximately 2:22 p.m., Respondent went to the Pyxis
8 on labor and delivery and withdrew a 100 mcg vial of Fentanyl under Patient 8's name.
9 Respondent was not assigned to care for Patient 8. Respondent's name does not appear on any
10 labor and delivery record for this patient. There was no reference in the electronic charting for
11 Patient 8 that she received the Fentanyl withdrawn by Respondent.

12 j. On March 30, 2007, Patient 9 had at 7:50 a.m., received an epidural for pain relief in
13 labor and delivery. Respondent was not assigned to provide care to Patient 9. However, at 9:17
14 a.m., Respondent withdrew a 100 mcg vial of Fentanyl under Patient 9's name. Respondent's
15 name does not appear on any labor and delivery record for this patient. There was no reference
16 in the electronic charting for Patient 9 that she received the Fentanyl withdrawn by Respondent.

17 k. On April 4, 2007, Respondent was assigned to postpartum. Patient 10 was in labor
18 and received an epidural at 10:19 a.m. At approximately 11:46 a.m., Respondent went to Pyxis
19 on labor and delivery and withdrew a 100 mcg vial of Fentanyl under Patient 10's name.
20 Respondent was not assigned to care for Patient 10. Respondent's name does not appear on any
21 labor and delivery record for this patient. There was no reference in the electronic charting for
22 Patient 10 that she received the Fentanyl withdrawn by Respondent.

23 l. On April 9, 2007, Patient 11 had at 9:30 a.m., received an epidural for pain relief in
24 labor and delivery. Respondent was not assigned to provide care to Patient 11. However, at 3:27
25 p.m., Respondent withdrew a 100 mcg vial of Fentanyl under Patient 11's name. Respondent's
26 name does not appear on any labor and delivery record for this patient. There was no reference
27 in the electronic charting for Patient 11 that she received the Fentanyl withdrawn by Respondent.

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1 m. On April 15, 2007, Respondent was assigned to postpartum. At approximately 1:09
2 p.m., while Patient 12 was in the operating room for delivery of twins, Respondent went to the
3 Pyxis on labor and delivery and withdrew a 100 mcg vial of Fentanyl under Patient 12's name.
4 Respondent was not assigned to care for Patient 12. Respondent's name does not appear on any
5 labor and delivery record for this patient. There was no reference in the electronic charting for
6 Patient 12 that she received the Fentanyl withdrawn by Respondent.

7 n. On June 2, 2007, Respondent was assigned to postpartum. At approximately 5:26
8 p.m., Respondent went to the Pyxis on labor and delivery and withdrew a 100 mcg vial of
9 Fentanyl under Patient 13's name. Respondent was not assigned to care for Patient 13.
10 Respondent's name does not appear on any labor and delivery record for this patient. There was
11 no reference in the electronic charting for Patient 13 that she received the Fentanyl withdrawn by
12 Respondent.

13 o. On June 9, 2007, Respondent was assigned to postpartum. At approximately 10:32
14 a.m., Patient 14 had received an epidural and at 12:28 p.m., she had a vaginal delivery. Eleven
15 minutes after Patient 14's delivery, Respondent went to the Pyxis on labor and delivery and
16 withdrew a 100 mcg vial of Fentanyl under Patient 14's name. Respondent was not assigned to
17 care for Patient 14. Respondent's name does not appear on any labor and delivery record for this
18 patient. There was no reference in the electronic charting for Patient 14 that she received the
19 Fentanyl withdrawn by Respondent.

20 p. On July 28, 2007, Patient 15 at 9:22 a.m., had an epidural placed and at 12:59 a.m.,
21 had a vaginal delivery. Fifty-six minutes after Patient's 15's delivery, Respondent went to the
22 Pyxis on labor and delivery and withdrew a 100 mcg vial of Fentanyl under Patient 15's name.
23 Respondent was not assigned to care for Patient 15. Respondent's name does not appear on any
24 labor and delivery record for this patient. There was no reference in the electronic charting on
25 Patient 15 that she received the Fentanyl withdrawn by Respondent.

26 q. On August 21, 2007, Patient 16 at 9:23 a.m., had an epidural placed. At
27 approximately 10:34 a.m., Respondent went to the Pyxis on labor and delivery and withdrew a
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1 100 mcg vial of Fentanyl under Patient 16's name. Respondent was not assigned to care for
2 Patient 16. Respondent's name does not appear on any labor and delivery record for this patient.
3 There was no reference in the electronic charting on Patient 16 that she received the Fentanyl
4 withdrawn by Respondent.

5 r. On October 27, 2007, at approximately 10:42a.m., Patient 17 had received an
6 epidural. At approximately 2:20 p.m., Respondent went to the Pyxis on labor and delivery and
7 withdrew a 100 mcg vial of Fentanyl under Patient 17's name. Respondent was not assigned to
8 care for Patient 17. Respondent's name does not appear on any labor and delivery record for this
9 patient. There was no reference in the electronic charting for Patient 17 that she received the
10 Fentanyl withdrawn by Respondent.

11 s. On November 25, 2007, Respondent was assigned to postpartum. At approximately
12 10:39 a.m., Respondent went to Pyxis on labor and delivery and withdrew a 100 mcg vial of
13 Fentanyl under Patient 18's name. Respondent was not assigned to care for Patient 18.
14 Respondent's name does not appear on any labor and delivery record for this patient. There was
15 no reference in the electronic charting on Patient 18 that she received the Fentanyl withdrawn by
16 Respondent.

17 20. After Washington Hospital conducted an investigation into the above Fentanyl
18 discrepancies, Respondent admitted diverting the Fentanyl and that she "used it for myself at
19 home."

20 21. During an interview on January 27, 2010, Respondent admitted that while employed
21 at Washington Hospital during the relevant times, she had a "drug problem with Vicodin." She
22 did not have a valid prescription for this medication but would instead purchase it from other
23 people. Respondent further admitted that she was under the influence of this medication while
24 working at Washington Hospital.

25 22. Effective January 11, 2008, Respondent resigned her position as a registered nurse at
26 Washington Hospital.

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1 FIRST CAUSE OF DISCIPLINE

2 (Unprofessional Conduct – Diversion of Controlled Substance)

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4 23. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
5 on the grounds of unprofessional conduct as set forth in section 2762, subdivision (a), in that from
6 January 2, 2007 through November 25, 2007, while on duty as a registered nurse at Washington
7 Hospital, she obtained the controlled substance Fentanyl by fraud, deceit, misrepresentation or
8 subterfuge, in violation of Health and Safety Code section 11173, subdivision (a) as set forth
9 above in paragraph 19, subsections (a) through and including (s).

10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct – Use of Controlled Substances to an Extent or in a Manner
12 Dangerous or Injurious to Oneself or Others)

13 24. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
14 on the grounds of unprofessional conduct as set forth in section 2762, subdivision (b), in that
15 from January 2, 2007 through November 25, 2007, while on duty as a registered nurse at
16 Washington Hospital, she diverted Fentanyl for her own personal use as set forth above in
17 paragraphs 19 and 20. Respondent further admitted that during her employment at Washington
18 Hospital she was taking and under the influence of Vicodin as set forth above in paragraph 21.

19 THIRD CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct – False Entries in Hospital Records)

21 25. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
22 on the grounds of unprofessional conduct as defined in section 2762, subdivision (e), in that as set
23 forth in paragraph 19, subsections (a) through and including (s), she removed the controlled
24 substance Fentanyl from the Pyxis under the names of different labor patients, and failed to
25 document that the medications removed were administered.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Wrongful Possession of Controlled Substances and/or
3 Dangerous Drugs)

4 26. Respondent is subject to disciplinary action under Code section 2761, subdivision (a)
5 on the grounds of unprofessional conduct as defined in section 2762, subdivision (a), in that she
6 wrongfully possessed Fentanyl and Vicodin without a valid prescription therefor, in violation of
7 Code section 4060 as set forth above in paragraphs 19 through and including 21.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 416536, issued to Norma
12 Del Real, aka, Norma DelReal.

13 2. Revoking or suspending Nurse Midwife Certificate Number 1081, issued to Norma
14 Del Real, aka Norma DelReal.

15 3. Revoking or suspending Nurse Midwife Furnishing Certificate Number 1081, issued
16 to Norma Del Real, aka Norma DelReal.

17 4. Revoking or suspending Nurse Practitioner Certificate Number 7464, issued to
18 Norma Del Real, aka Norma DelReal.

19 5. Ordering Norma Del Real, aka Norma DelReal to pay the Board of Registered
20 Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to
21 Business and Professions Code section 125.3.

22 6. Taking such other and further action as deemed necessary and proper.

23 DATED: 6/25/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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